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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA

Plaintiff,

v.

**MICHAEL D. KING, and
PLAINTIFF'S
ASCENT AVIATION SOLUTIONS, L.L.C.**

Defendants.

Case No: 4:19-cv-1418

**MOTION TO EXCLUDE OR
LIMIT TESTIMONY OF
PLAINTIFF'S UNRETAINED
EXPERTS**

INTRODUCTION

Plaintiff United States of America timely designed two employees of the Federal Aviation Administration to testify as Non-Retained Experts. Defendants contend that Plaintiff's non-retained experts be excluded from testifying at trial or their testimony limited because Plaintiff has failed to provide a meaningful summary of the facts and opinions to which they will testify at trial as required by *Fed. R. Civ. P. 26(a)(2)(C)*.

POINTS AND AUTHORITIES

A party must disclose to the other parties the identity of any witness it may use at trial to present expert testimony. *Fed. R. Civ. P. 26(a)(2)(A)*. "Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report . . . if the witness is one retained or specially employed to provide expert testimony . . ." *Fed. R.*

1 *Civ. P. 26(a)(2)(B)*. When a full report is not required under *Rule 26(a)(2)(B)*, a party
2 must disclose the subject matter on which the witness is expected to present evidence and
3 a summary of the facts and opinions to which the witness is expected to testify. *Fed. R.*
4 *Civ. P. 26 (a)(2)(C)*. This rule mandates "summary disclosures of the opinions to be
5 offered by expert witnesses who are not required to provide reports under *Rule*
6 *26(a)(2)(B)* and of the facts supporting those opinions."

7 **UNRETAINED EXPERT DISCLOSURES**

8
9 The disclosure by Plaintiff of Unretained Expert Charles Tompkins is as follows:

10 **Mr. Tompkins was one of the individuals who investigated Michael D.**
11 **King and Ascent Aviation Solutions, L.L.C. Mr. Tompkins will testify to his**
12 **investigation, FAA requirements for operating commercial flights in the**
13 **United States, which regulations King violated, and damages. Mr. Tompkins**
14 **will testify in accordance with the available evidence related to the**
15 **investigation.**

16
17 The disclosure by Plaintiff of Unretained Expert Tim Allen is as follows:

18 **Mr. Allen works for the FAA and was one of the individuals who assisted**
19 **in the investigation of Michael D. King and Ascent Aviation Solutions, L.L.C.**
20 **Mr. Allen will testify to his investigation, FAA requirements for operating**
21 **commercial flights in the United States, which regulations King violated, and**
22 **damages. Mr. Allen may also testify to Part 135 air carrier operations, illegal**
23 **charter operations, aircraft leases, FAA advisory circulars pertaining to illegal**
24 **charters, and part 119/ 135/91 Federal Aviation Regulations.**

1 Plaintiff's disclosures appear to meet the requirements of one prong of *Rule 26 (a)*
2 *(2) (C) (i)* which states "the subject matter on which the witness is expected to present
3 evidence under Federal Rule of Evidence 702, 703, or 705";

4 Plaintiff's disclosure **does not** meet the requirements of *Rule 26 (a) (2) (C) (ii)*
5 which states "a summary of the facts and opinions to which the witness is expected to
6 testify";

7
8 The disclosures of these two unretained experts are inadequate since the summary
9 of the facts and their opinions to be offered at trial is not adequately disclosed. The
10 designation of these experts is vague as to their expected testimony and opinions to be
11 rendered. Additionally, as employees of the FAA, they are biased in their opinions.

12
13 **RELIEF REQUESTED**

14 Defendants' respectfully pray that this Court strike these unretained experts from
15 testifying at trial or limit their testimony to the evidence obtained during their
16 investigations without offering an opinion..

17 January 26, 2020

18 /s/ Edward A. Rose, Jr.

19
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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing on this 26st day of January 2020,
with the Clerk of the Court by using the CM/ECF system, which will send a notice of
electronic filing to the following:

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January 26, 2020

/s/ Edward A. Rose, Jr.

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